

Service Date: December 2, 1997

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF the Application)	
of Mid-Rivers Telephone Cooperative)	UTILITY DIVISION
and U S WEST Communications, Inc.)	
Pursuant to Section 252(e) of the)	DOCKET NO. D97.10.208
Telecommunications Act of 1996 for)	
Approval of their First Amendment)	ORDER NO. 6033
to their Interconnection Agreement.)	

**ORDER APPROVING FIRST AMENDMENT
TO INTERCONNECTION AGREEMENT**

Introduction and Background

The Montana Public Service Commission (Commission) has previously approved a negotiated interconnection agreement between U S WEST Communications, Inc. (U S WEST) and Mid-Rivers Telephone Cooperative (Mid-Rivers). See In the Matter of Mid-Rivers Telephone Coop. Application for Approval of Interconnection Agreement, Final Order, Docket No. D97.2.19, Order No. 5981 (May 5, 1997). In that Docket, the Commission notified interested parties and offered an opportunity to intervene, request a hearing and/or file comments concerning approval of the initial agreement. No comments, requests for hearing, or petitions to intervene were filed in that proceeding. The Commission concluded that the parties' agreement met the requirements of . 252(e)(2)(A) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

On October 31, 1997, U S WEST and Mid-Rivers filed an amendment modifying their

interconnection agreement. The amendment modifies Sections I and II of the agreement's Exhibit 1 to expand the geographic area covered by the agreement. Additional exchanges include the Billings local service and EAS areas, and the Fairview, Lewistown, Miles City, Sidney and Wibaux exchanges as operated by U S WEST on January 1, 1997. It also covers EAS traffic between the local service area of Sidney and the local service areas of Savage and West Sidney. Further, it states, "Except as modified herein, all other terms and conditions of the Agreement remain in full force and effect."

Applicable Law and Commission Decision

1. Like the initial interconnection agreement, U S WEST and Mid-Rivers voluntarily negotiated the First Amendment to the agreement. The standards for approving a negotiated interconnection agreement--or an amendment to an existing agreement--are set forth in 47 U.S.C. . 252(e)(2)(A).

2. The Commission must approve or reject the amendment, with written findings as to any deficiencies. 47 U.S.C. . 252(e)(1). Section 252(e)(2)(A) prescribes the grounds for rejection of an agreement reached by voluntary negotiation:

(2) GROUNDS FOR REJECTION.--The State commission may only reject--

(A) an agreement (or any portion thereof) adopted by negotiation under [47 U.S.C. . 252(a)] if it finds that

(I) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity;

3. Notwithstanding the limited grounds for rejection in 47 U.S.C. . 252(e)(2)(A),

the state commission's authority is preserved in . 252 (e)(3) to establish or enforce other requirements of state law in its review of arbitrated or negotiated agreements, including requiring compliance with state telecommunications service quality standards or requirements. Such compliance is subject to . 253 of the 1996 Act which does not permit states to permit or impose any statutes, regulations, or legal requirements that prohibit or have the effect of prohibiting market entry.

4. Section 252(e)(4) of the 1996 Act provides that a negotiated agreement submitted for a state commission's approval must be approved or rejected within 90 days or it will be deemed approved. Thus, Commission approval or rejection according to the substantive standards set forth in the 1996 Act must issue by January 29, 1998, 90 days following the submission of the agreement for Commission approval.

5. The Commission allowed adequate opportunity to comment on the approval of the parties' interconnection agreement prior to the May 5, 1997 approval of the agreement. No comments were received relating to the approval of the parties' agreement pursuant to the standards set forth above.

6. Amendments to interconnection agreements should be reviewed and approved in the same manner and according to the same standards as initial agreements. The Commission must determine whether they: (1) discriminate against a telecommunications provider that is not a party to the agreement; or (2) are consistent with the public interest, convenience and necessity. 47 U.S.C. . 252(e)(2)(A). ARM 38.5.4054 sets forth the procedure that the Commission will use for approving agreements. This includes notice and a 21-day comment period for comments by interested parties and a requirement that the parties file a proposed notice and final order.

7. The Commission may waive the application of its rules for apparent good cause or as justice may require, unless precluded by statute. ARM 38.2.305. A summary procedure for approval of this amendment should be used and waiver of ARM 38.5.4054 granted for three reasons: (1) the amendment affects only the geographic area, not the substantive terms of interconnection; (2) no carriers submitted comments in the prior approval proceeding; and (3) the rule requires procedures that are unnecessary in this instance.

8. The Commission concludes that it is appropriate to waive ARM 38.5.4054 in this proceeding because the procedures set forth therein are unnecessary when the only modification to the agreement is to expand the geographic area covered by the agreement.

9. The expanded area for Mid-River's competitive entry provides for a larger area in which Mid-Rivers may operate as a new competitive local exchange carrier. This is not inconsistent with the public interest as end users should benefit from additional competitive choice for telecommunications services. Other carriers who are not parties to the agreement are not discriminated against as they may adopt the entire interconnection agreement or negotiate their own interconnection agreement.

10. The Commission finds that the terms in the parties' First Amendment to their interconnection agreement appear to conform to the standards required by § 252(b)(2)(A) of the 1996 Act and should be approved.

Conclusions of Law

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. U S WEST Communications, Inc. is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA.

2. The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it.

Section 69-3-103, MCA.

3. The United States Congress enacted the Telecommunications Act of 1996 to encourage competition in the telecommunications industry. Congress gave responsibility for much of the implementation of the 1996 Act to the states, to be handled by the state agency with regulatory control over telecommunications carriers. *See generally*, the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (amending scattered sections of the Communications Act of 1934, 47 U.S.C. . . . 151, *et seq.*). The Montana Public Service Commission is the state agency charged with regulating telecommunications carriers in Montana and properly exercises jurisdiction in this Docket pursuant to Title 69, Chapter 3, MCA.

4. Adequate public notice and an opportunity to be heard has been provided to all interested parties, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

5. The Commission has jurisdiction to approve amendments to interconnection agreements negotiated by the parties and submitted to the Commission for approval according to . 252(e)(2)(A). Section 69-3-103, MCA.

6. Approval of interconnection agreements by the Commission is subject to the requirements of federal law as set forth in 47 U.S.C. . 252. Section 252(e) limits the Commission's review of a negotiated agreement to the standards set forth therein for rejection of such agreements. Section 252(e)(4) requires the Commission to approve or reject the First

Amendment to the parties' interconnection agreement by January 29, 1998, or it will be deemed approved.

7. The Commission may waive the application of its rules for apparent good cause or as justice may require, unless precluded by statute. ARM 38.2.305.

8. The Commission may approve the amendment to the agreement if such action is consistent with the public interest, convenience and necessity and does not discriminate against a carrier not a party to the agreement. 47 U.S.C. § 252(e)(2)(A).

Order

THEREFORE, based upon the foregoing, it is ORDERED that:

1. ARM 38.5.4054 is waived; and
2. the First Amendment to the parties' interconnection agreement is APPROVED.

DONE AND DATED this 25th day of November, 1997, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision.
A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.